IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WA.No. 1702 of 2007

AGAINST THE JUDGEMENT IN WP(C) NO..20544/2007 DATED 04/07/2007

APPELLANT: PETITIONERS IN W.P.
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1. THE CARDAMOM MARKETING CORPORATION
   VANDANMEDU
   REPRESENTED BY THE PARTNER MATHEW SCARIA

2. AYSHA ABU, PROPRIETRESS
   M/S. SURYA'S MARINE L.P.G. KIT COMPANY
   XI/1032, SUB JAIL ROAD, ALUVA

BY ADV. SRI.C.K.THANU PILLAI
SRI.JINU K MOHAN

RESPONDENTS: RESPONDENTS IN W.P.
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1. THE STATE OF KERALA
   REPRESENTED BY THE SECRETARY TO GOVTERNMENT,
   LAW DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM

2. THE DEPUTY COMMISSIONER (APPEAL)
   COMMERCIAL TAXES, ERNAKULAM

3. THE INSPECTING ASST.COMMISSIONER
   COMMERCIAL TAXES, KATTAPPANA

4. THE INTELLIGENCE OFFICER
   SQUAD NO.1, COMMERCIAL TAXES
   MATTANCHERY AT ALUVA

5. THE COMMERCIAL TAX OFFICER, ALUVA

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 1702 OF 2007

Dated this the 13th July, 2007

JUDGMENT

H.L.DATTU, C.J.

This Writ Appeal is filed challenging the judgment delivered by the learned single Judge in W.P.(C) No.20544 of 2007, dated 4th July, 2007. In the said judgment, the learned Judge has observed as under:

> "Since the challenge against levy of court fee in tax matters is rejected by this court and confirmed by Division Bench vide judgment in **Chackolas Spinning & Weaving Mills Ltd.** v. **State of Kerala** (2006 (1) KLT 989), this Writ Petition is dismissed following the said judgment."

2. A Division Bench of this Court, while upholding the constitutional validity of the levy of additional court fee to constitute legal benefit fund, has observed as under:

> "The object and purpose of the legal benefit fund is laudable. Article 39A stipulates that State shall secure that the operation of legal system promotes justice on a basis of equal opportunity and shall in particular, provide free legal aid, by suitable legislation or Schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The Government is collecting fee, which forms part of the Legal Benefit Fund and it cannot be characterized as a tax. The purpose and object of such additional fee has been specifically stated in the statutory rules. In order to achieve the above purpose fees have to be levied."

The Division Bench further observed as under:

> "The correlation between the amount raised through the "fee" and the expenses involved in providing the services need not be examined with a view to ascertaining any accurate, arithmetical equivalence or precision in the correlation but it would be sufficient that there is a broad or general correlation. Looking at the object and purpose of the Legal Benefit Fund, the levy of fee is not disproportionately high."

3. We find no reason to take a different view than what has been observed and decided by a Division Bench of this Court in the aforesaid decision. In that view of the matter, we are of the opinion that the learned single Judge has not committed any error. Therefore, the Writ Appeal requires to be rejected and it is rejected.

4. In view of the order passed in the Writ Appeal, the relief sought for in I.A.No.588 of 2007 need not be considered by this Court. Accordingly, the said application is also rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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